

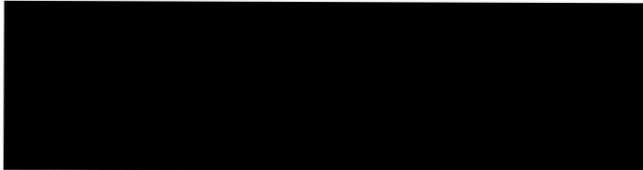
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

B2

PUBLIC COPY



FILE:

EAC 04 057 51187

Office: VERMONT SERVICE CENTER

Date: MAR 10 2006

IN RE:

Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

Row

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts as a concert violinist and strings teacher. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

In a letter dated September 26, 2005, the petitioner states, "I would like to ask you to let me know if it is better to reconsider my case through EB-2 classification. I would like to request an oral argument to clarify this." The regulations do not permit consideration of an alien's eligibility under more than one employment-based immigrant classification on the basis of a single petition. A separate petition must be filed for each classification sought. *See generally* 8 C.F.R. § 204.5.

Accordingly, there is no need for oral argument in this case. Citizenship and Immigration Services (CIS) has sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner has identified no unique factors or issues of law to be resolved in her case and the written record of proceedings fully represents the relevant facts and issues involved in the petitioner's case. Consequently, the request for oral argument is denied.

On appeal, the petitioner submits letters and additional evidence, which do not overcome the deficiencies of the petition. Consequently, the appeal will be dismissed for the following reasons.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

We address the evidence submitted and the petitioner's claims in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not discussed below.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted evidence of her receipt of the following scholarships to support her studies in music education at Old Dominion University in Norfolk, Virginia: International Student Leadership Award for 2002-2003, Diehn Scholarship first awarded in 2002¹, and Jerome J. Kern Scholarship for 2001-2002. Scholarships, fellowships and other forms of competitive financial aid do not meet this criterion because they are awarded to support academic studies or training and only fellow students, not established professionals in the alien's field, are eligible and compete for such aid. Accordingly, the petitioner's scholarships do not satisfy this criterion.

The petitioner also claims that her two-time appearance on the Dean's List at Old Dominion University meets this criterion. Academic honors, such as inclusion on a dean's list, reflect scholastic achievement and an individual's high-ranking in comparison to other students. Academic honors do not, however, demonstrate national or international acclaim as an established professional in a given field.

¹ The petitioner submitted evidence of her continued receipt of the Diehn Scholarship and other forms of financial aid in response to the director's Request for Evidence (RFE) and on appeal. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Although they may be competitive and prestigious, the petitioner's scholarships and inclusion on the Dean's List at Old Dominion University do not demonstrate the requisite sustained acclaim as a musician at the top of her field. Accordingly, the petitioner does not meet this criterion.

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner claims to meet this criterion through her past membership in the Moscow Chamber Orchestra, The Seasons; the orchestra of the Moscow State Theater, Gelikon; and CREO, the Old Dominion University Contemporary Music Ensemble. The record does not support this claim.

The petitioner submitted evidence that she was a member of The Seasons from 1998 to 2000. On appeal, the petitioner states, "Membership in this orchestra required prizewinning at an international competition or outstanding performing skills." The submitted evidence concerning The Seasons does not support this statement. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). An undated, blue-bound booklet about the orchestra states, "Today The Seasons Orchestra is represented by 20 musicians having [the] highest musical education. Their average age is about thirty." The booklet does not further discuss the orchestra's eligibility or selection criteria. A letter dated in 2000 by [REDACTED], Professor and Pro-Rector at the Ural State Academy of Music, confirms that "[a]fter graduating from the Academy of Music[, the petitioner] is doing the job she was trained for in Moscow." Professor [REDACTED] does not provide any details concerning the petitioner's work as a musician in Moscow. Hence, the evidence relevant to the petitioner's membership in The Seasons does not establish that outstanding achievements, as judged by recognized national or international experts, are prerequisite to membership in this orchestra.

Similarly, the record documents the petitioner's work as a violinist for the Gelikon in Moscow from 1997 to 1999, but does not demonstrate that outstanding achievements are prerequisite to membership in the theater's orchestra. An undated letter signed by the General Manager of the theater and the Chief Conductor and Director of the theater's orchestra, states that the petitioner became an orchestra artist of the Gelikon "after successfully passing a competition." The letter provides no further details regarding this competition or the orchestra's eligibility and selection criteria. For example, the letter does not state that the competition which the petitioner passed was national in scope and judged by recognized national or international orchestral musicians or conductors. Accordingly, the record does not establish that outstanding achievements are prerequisite to membership in the Gelikon's orchestra.

In his letter dated November 18, 2003 [REDACTED], Associate Professor of Music and Director of CREO at Old Dominion University, confirms the petitioner's membership in CREO. Professor [REDACTED] praises the petitioner's skills, but does not discuss the eligibility and selection criteria of CREO or otherwise indicate that the petitioner was admitted to the ensemble based on her outstanding

achievements, as judged by recognized national or international experts. In his second letter dated April 30, 2005 and submitted on appeal, Professor ██████ asserts that the petitioner's work with CREO "meets the criterion of belonging to 'associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or [sic] international experts in their disciplines.'" This assertion is unsupported by any discussion of the eligibility and selection criteria for CREO in Professor ██████'s second letter or any other independent evidence of the ensemble's membership requirements. Consequently, the petitioner does not meet this criterion.

(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

With her Form I-140, the petitioner submitted excerpts of reviews of performances and one recording of *The Seasons*, but none of these documents mention or identify the petitioner. The petitioner also submitted two announcements of her performances with another musician that were published in *The Virginian-Pilot*. These brief listings contain no substantive discussion of the petitioner's work. The record is also devoid of any evidence that *The Virginian-Pilot* is a nationally circulated newspaper or otherwise considered a form of major media. The petitioner submitted another announcement of one of her performances on an undated printout from the *Artsong Update* website. Again, the brief announcement contains no discussion of the petitioner's work and the record contains no evidence that *Artsong Update* is a professional, major trade publication or a form of major media.

With her RFE response and on appeal, the petitioner submitted announcements and reviews of her performances from *Artsong Update* and *The Virginian-Pilot* and other sources. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Accordingly, the petitioner does not meet this criterion.

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner does not claim eligibility under this criterion. We nonetheless note that the record contains evidence that the petitioner has taught music at the Greenbrier Christian Academy in Chesapeake, Virginia. While her teaching responsibilities undoubtedly include frequent judgment of her students' work, such activity does not satisfy this criterion. Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The petitioner submitted no evidence that she has judged of the work of other musicians in her field in a manner significantly outside the general duties of

her teaching position and reflective of sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted numerous letters from individuals with whom she has worked. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his or her field beyond the limited number of individuals with whom he or she has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

In his letter dated November 18, 2003, Professor [REDACTED] explains that he has known and worked with the petitioner for over three years. Professor [REDACTED] states that the petitioner has "demonstrated exceptionally rare skills and tenacity in mastering complex contemporary works" as a musician with CREO. Professor [REDACTED] explains that he has "been unable to find anybody equaling [the petitioner's] professionalism" in the Hampton Roads region of Virginia. He also praises the petitioner's efforts to "bring the best violin works to thousands of people in the area. I know of no other violinist in the state of Virginia making such ambitious projects happen. Her concerts are always a huge success." Professor [REDACTED] does not, however, discuss any original, artistic contributions of major significance that the petitioner has made to her field in a manner consistent with sustained national or international acclaim. Rather, Professor [REDACTED] indicates that the petitioner's achievements are outstanding only on a regional basis in Virginia.

Similarly, [REDACTED], a colleague of the petitioner and fellow member of CREO, praises the petitioner's skills and attests to her "valuable addition to the music community in the Hampton Roads area," but does not discuss any original, major contributions that the petitioner has made to her field in a manner consistent with the requisite sustained acclaim.

[REDACTED] the petitioner's supervisor at the Greenbrier Christian Academy, praises the petitioner's musical, organizational and teaching skills, but does not indicate that the petitioner has made any original contributions of major significance to the field of musical education in a manner consistent with sustained national or international acclaim. [REDACTED] Superintendent of the Greenbrier Christian Academy, also praises the petitioner's work for the school and her community involvement through her music, but Mr. [REDACTED] does not identify any major contributions that the petitioner has made to her field.

██████████ Associate Professor of Music at Old Dominion University, states that the petitioner was a superior student in several of his classes. Professor ██████████ attests to the petitioner's "extraordinary musical talent" and "essential drive," but does not discuss any achievements of the petitioner that he considers to be major, original contributions to her field. Similarly, Professor ██████████ of the Ural State Academy of Music in Russia, confirms the petitioner's excellent performance as a student but does not attest to any major contributions that the petitioner has made to her field as a professional musician or teacher.

The letter from the Gelikon praises the petitioner's talent, her mastery of the "Italian authentic style," and lists her performances with the Gelikon orchestra in Russia and Taiwan. Yet the letter does not indicate that the petitioner's work with the Gelikon orchestra made original contributions of major significance to her field.

██████████ Concertmaster of the Virginia Symphony and adjunct professor at Old Dominion University, states that he has known and taught the petitioner for approximately three years. Professor ██████████ praises the petitioner as an "excellent violinist with outstanding work habits." ██████████ a musician and composer in Hampton, Virginia, states that he has known the petitioner for about six months and has seen her perform as a violin soloist. Mr. ██████████ praises the petitioner's talent and notes that she "commands the virtuosic works of violin literature and is completely at ease with concert-level repertoire." ██████████ Pastor of the Prince of Peace Lutheran Church in Virginia Beach, states that the petitioner has frequently performed at the church, that her "musical abilities are extraordinary" and that her artistic skills and musical teaching "make significant contributions to our community." ██████████ Associate Pastor of First Baptist Church of Norfolk, Virginia, states that the petitioner has been a member of the church's orchestra for a year and recently "gave an excellent violin concert which featured her tremendous ability and skills." Yet Professor ██████████ Mr. ██████████ Pastor ██████████ and Rev. ██████████ do not attest to any original, major contributions that the petitioner has made to her field in a manner consistent with sustained national or international acclaim.

Other evidence in the record indicates that the petitioner has performed throughout Russia and in several countries as a member of The Seasons and the Gelikon orchestras; has frequently performed in Virginia as a soloist, part of a duet and with CREO; recorded one compact disc with another musician in 2003; and authored an instructional booklet for beginning violinists. Yet the record is devoid of any evidence that these achievements were critically acclaimed, significantly influenced other musicians, or have otherwise made major contributions to the petitioner's field in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted copies of two spiral-bound booklets entitled "38 Songs for the Beginning Violinist," one of which is captioned "Violin Part" and the other, "Piano Part." The booklets contain

no publication information and the petitioner submitted no evidence that these booklets have been published in professional, major trade publications or other major media. Accordingly, the petitioner does not meet this criterion.

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

This criterion generally applies to the visual – not performing – arts. We nonetheless address the petitioner's eligibility under this criterion given her claim to satisfy this category through the numerous documents submitted regarding her musical performances. However, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself. Frequent performances are inherent to the musical profession. The record in this case documents the petitioner's numerous musical performances, but fails to establish that any of her performances garnered significant recognition in her field reflective of the requisite sustained national or international acclaim.

The petitioner submitted evidence of her ensemble performances with The Seasons and the Gelikon orchestras of Moscow, some of which occurred at prominent venues in Russia and other countries. Yet the record contains no evidence that the petitioner was a featured soloist or lead musician with either of these orchestras, that her individual work was critically acclaimed, or that her performances were otherwise recognized in her field in a manner consistent with sustained national or international acclaim.

The petitioner also submitted numerous programs, fliers and announcements of her various performances in Virginia after her arrival in the United States. The majority of these performances took place at Old Dominion University and at several churches in Virginia. The record contains no evidence that the petitioner was, for example, featured as a soloist at distinguished concert venues in a manner consistent with sustained national acclaim in the United States. With her RFE response and on appeal, the petitioner submitted additional documentation of her concerts and reviews of some of those performances. This evidence arose after the petition was filed and consequently cannot be considered. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Accordingly, the petitioner does not meet this criterion.

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner claims to meet this criterion through her work with The Seasons and CREO. The evidence shows that the petitioner was a musician with The Seasons, which the record indicates has a distinguished reputation. The evidence does not establish, however, that the petitioner was a lead musician, featured soloist or otherwise performed a leading or critical role for The Seasons. In addition, the petitioner left this orchestra in 2000, nearly four years before her petition was filed, and her work with The Seasons thus does not demonstrate sustained acclaim.

In his letter dated April 30, 2005 and submitted on appeal, Professor ██████████ states that the petitioner performs with CREO as both a soloist and chamber musician. Professor ██████████ explains that he has not found any violinist or violist in the Hampton Roads region who equals the petitioner's professionalism and he affirms, "All our innovative endeavors would hardly be possible without [the petitioner's] performing. Her role is crucial to our ensemble's future successes." Professor ██████████ concludes that given the petitioner's role in CREO, "there is clearly an [sic] 'evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.'" The record does not support his statement. Even if the record established the petitioner's leading or critical role for CREO, the evidence does not demonstrate that this ensemble has a distinguished reputation, the petitioner's role in which would reflect national or international acclaim. Instead, the record indicates that CREO's reputation is regional and does not extend across the United States or internationally. In his April 30, 2005 letter, Professor ██████████ states that CREO is "the only professional new-music group in the state of Virginia" and that the ensemble "has been listed in the Virginia Commission for the Arts' Tour Directory." The record includes concert programs for CREO performances at Old Dominion University, but at no other venues in Virginia or other states or countries. These programs, combined with Professor ██████████ statements, indicate that CREO's reputation does not extend beyond the state of Virginia. Consequently, the petitioner fails to meet this criterion.

On appeal, the petitioner requests consideration of her teaching and instructional booklet as comparable evidence of her eligibility. Comparable evidence will only be considered when the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) "do not readily apply to the beneficiary's occupation." The petitioner has not explained or documented how the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to her occupation as a musician and music teacher. To the contrary, the record indicates that at least seven of the criteria at 8 C.F.R. § 204.5(h)(3) are applicable to the petitioner's profession. Moreover, we have considered the evidence regarding the petitioner's musical teaching and her instructional booklets in our above discussions of the fourth, fifth, and sixth criteria.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The record in this case does not establish that the petitioner has achieved sustained national or international acclaim as a musician or music teacher placing her at the very top of her field. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed. This decision is rendered without prejudice to the filing of a new petition, with the requisite supporting evidence, under section 203(b)(2) of the Act.



Page 10

ORDER: The appeal is dismissed.